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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 3 of the )  
Cable Television Consumer Protection )  
and Competition Act of 1992 )

MM Docket No. 92-262

Tier Buy-Through Prohibitions )

**COMMENTS OF THE CONSUMER ELECTRONICS GROUP  
OF THE ELECTRONIC INDUSTRIES ASSOCIATION**

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby responds to the Notice of Proposed Rulemaking ("Notice") in which the Commission seeks comments on rules for implementation of the "buy-through" prohibition of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act").<sup>1</sup> The buy-through prohibition generally forbids cable operators to require consumers to subscribe to any tier other than the basic tier as a condition of access to video programming offered on a per channel or per program basis.<sup>2</sup> EIA/CEG welcomes the opportunity to assist the Commission in

1/ Pub.L. No. 102-385, 102 Stat. 1460 (1992) ("1992 Cable Act").

2/ 1992 Cable Act at Section 3(a), amending Communications Act § 623(b)(8)(A). The prohibition is subject to an exemption, of potentially ten years duration, for situations in which the cable system, "by reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis . . . ." Id. at § 623(b)(8)(B).

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479

developing means to implement the buy-through prohibition and, in so doing, to provide for the greatest possible harmony with other closely related provisions of the Cable Act. In particular, the Commission should be mindful of the requirements and underlying purposes of Section 17 of the Cable Act, which seeks to maximize consumer benefits by eliminating incompatibilities between cable systems and consumer electronics equipment.

I. INTRODUCTION AND INTEREST OF EIA/CEG

EIA/CEG represents the consumer electronics industry, an industry that provides the American public with televisions, radios, videocassette recorders and videocameras, compact disc players, and a wide variety of other products. Our membership includes most major consumer electronics manufacturers, as well as many smaller companies that design, produce, import, distribute, sell, and service electronic products. EIA/CEG has long played an active role in deliberations involving the interrelationships between video consumer equipment (such as TVs and VCRs) and cable television systems. Together with the National Cable Television Association, we have sponsored and participated in a Joint Engineering Committee for many years.

EIA/CEG supported passage of the Cable Act and is eager to participate in related implementation proceedings

at the Commission.<sup>3</sup> In these efforts, EIA/CEG will seek to promote the congressional objective of protecting consumers through increased competitive opportunities for service and equipment suppliers and through other measures directly applicable to cable operators.

## II. DISCUSSION

The Commission is quite right in recognizing that regulations to implement the buy-through provisions of the Cable Act must be founded upon "a clear understanding of the technical processes and equipment involved in providing and preventing subscribers' access to individual programs and channels and groups of channels carried on a cable system."<sup>4</sup> Inevitably, in the first instance at least, it is the cable operators who must provide the information about their practices; there is no other way to develop the "clear understanding" of current practices that the Commission properly seeks. Accordingly, EIA/CEG's own first-round

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<sup>3</sup>/ EIA/CEG has an interest in several of the issues to be considered in proceedings to implement the 1992 Cable Act and has already filed comments in the "cable home wiring" proceeding. See Comments of the Consumer Electronics Group of the Electronic Industries Association, MM Docket No. 92-260 (Dec. 1, 1992). EIA/CEG has a major interest in the cable compatibility issue, has just begun meetings with the cable industry specifically relating to the compatibility provision of the Cable Act, and expects to play an active role in the related proceeding the Commission is scheduled to initiate on January 14.

<sup>4</sup>/ Notice at ¶ 4.

comments are necessarily limited, pending disclosure by the cable operators of the information requested by the Commission concerning the "processes and equipment" cable systems now use to control program access.

It is not premature, however, to highlight the imperative that the Commission's decisions in this proceeding must be consistent with the Cable Act's objective of assuring compatibility between cable service and consumer electronics equipment.<sup>5</sup> Congress recognized that cable companies' usage of "cable scrambling, encoding, or encryption technologies and devices, including converter boxes," were "disabl[ing] or inhibit[ing]" the "premium features and functions" contained in "new and recent models of television receivers and video cassette recorders." Congress further recognized that, "if these problems are allowed to persist, consumers will be less likely to purchase, and electronics equipment manufacturers will be less likely to develop, manufacture, and offer for sale, television receivers and video cassette recorders with new and innovative features and functions."<sup>6</sup> Accordingly, Congress established a process whereby regulations must be

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<sup>5/</sup> 1992 Cable Act at Section 17, creating new § 624A of the Communications Act.

<sup>6/</sup> Id. at § 624A(a)(1).

developed, by April 3, 1994, to "assure . . . compatibility" between consumer electronics products and cable systems.<sup>7</sup>

Those regulations must, among other things, include a determination by the Commission "whether and, if so, under what circumstances, to permit cable operators to scramble or encrypt signals or to restrict cable systems in the manner in which they encrypt or scramble signals" where such practices have the potential to "interfere with the functions of subscribers' television receivers or video cassette recorders."<sup>8</sup> The regulations must also "promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes and of remote control devices compatible with converter boxes."<sup>9</sup>

It is essential, then, that the mandate for compatibility between consumer electronics products and cable systems, the power to restrict scrambling and encryption, and the goal of competitive supply of converter boxes be kept in mind throughout the deliberations on the

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<sup>7</sup>/ Id. at § 624A(b)(1).

<sup>8</sup>/ Id. at § 624A(b)(2).

<sup>9</sup>/ Id. at § 624A(b)(2)(C). EIA/CEG understands the term "converter boxes," as used in the statute, to include addressable converters, descramblers, and similar devices. All such devices are commonly referred to by consumers as converter boxes (or cable boxes), and all would need to be covered for any implementing regulations to fulfill the legislative intent.

buy-through prohibition. If there are alternative ways to implement the buy-through prohibition, but the alternatives have markedly different effects on the Commission's ability to meet its responsibilities of assuring compatibility with consumer electronics products and promoting competition for converter boxes, the Commission's duty would be to take these other statutory requirements into account.<sup>10</sup> Thus, in the present proceeding, the Commission should evaluate not just the use of addressable converter boxes and similar technologies but also the potential use of alternative means of controlling program access. In particular, measures such as a national renewable security standard, point-of-entry addressable broadband descrambling, and interdiction must be fully considered.<sup>11</sup>

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<sup>10</sup>/ For example, one way to avoid buy-through problems is to increase the use of addressable converters. But this would exacerbate the problem of incompatibility with consumer electronics equipment, even extending it to cable systems where compatibility is not currently a problem. This is surely not what the Congress intended.

<sup>11</sup>/ These are among the topics that will be addressed in discussions, which have just begun, between the consumer electronics and cable industries. EIA/CEG plans to participate in this dialogue in a spirit of good faith and constructive cooperation. For that reason, and because the dialogue has just started, we believe that neither party can appropriately be too dogmatic in prescribing solutions to the buy-through problem. All we can do is to try to work together in developing solutions that take reasonable account of the limitations of existing system designs and also recognize the need to increase competition and improve service to consumers.

The present design of cable systems cannot be changed overnight, but neither can the serious flaws of the present systems be left unremedied for long.<sup>12</sup> EIA/CEG accordingly recommends that the Commission take pains not to confine its review of the buy-through issue to an examination of how cable systems are currently configured today. How they should be configured tomorrow -- in both the analog NTSC and digital environments -- is at least equally important. And, any rules developed in this proceeding should be expressly subject to later review (and modification, if necessary) in the course of the compatibility proceedings required by Section 17 of the Cable Act.

### III. CONCLUSION

EIA/CEG believes that the regulations adopted to implement the buy-through prohibition can and should be consistent with other objectives and requirements of the Cable Act. In particular, we believe that rules ultimately adopted in this proceeding must not impede realization of the congressional mandates of cable system compatibility

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<sup>12/</sup> Needless to say, there is absolutely nothing that can be done to the huge embedded base of consumers' televisions and VCRs to implement, or to facilitate implementation of, the Cable Act's buy-through prohibition.

with consumer electronics products and of competitive supply of converter boxes and other consumer equipment.

We will welcome the opportunity to participate further as the policy development process continues.

Respectfully submitted,

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